Early Journal Content on JSTOR, Free to Anyone in the World

This article is one of nearly 500,000 scholarly works digitized and made freely available to everyone in the world by JSTOR.

Known as the Early Journal Content, this set of works include research articles, news, letters, and other writings published in more than 200 of the oldest leading academic journals. The works date from the mid-seventeenth to the early twentieth centuries.

We encourage people to read and share the Early Journal Content openly and to tell others that this resource exists. People may post this content online or redistribute in any way for non-commercial purposes.

Read more about Early Journal Content at http://about.jstor.org/participate-jstor/individuals/early-journal-content.

JSTOR is a digital library of academic journals, books, and primary source objects. JSTOR helps people discover, use, and build upon a wide range of content through a powerful research and teaching platform, and preserves this content for future generations. JSTOR is part of ITHAKA, a not-for-profit organization that also includes Ithaka S+R and Portico. For more information about JSTOR, please contact support@jstor.org.

IS ONE CLAIMING TITLE UNDER A QUITCLAIM DEED A BONA FIDE PURCHASER?*

IN considering this question two primary considerations are presented at the outset, (1) what is meant by a quitclaim deed, and (2) what constitutes a bona fide purchaser. The quitclaim, as used in the law of conveyancing in the United States, is ordinarily treated as analogous to the old English deed of release, but the latter could operate only when the vendee was already the owner of an estate in the land, while the former is recognized as an original conveyance. The usual operative words are "remise, release, and forever quit claim." Frequently a covenant against incumbrances by the grantor is added, but the usual covenants of title found in a warranty deed are absent. The ordinary quitclaim does not purport to convey the land itself, but rather the "right, title, and interest" of the grantor. The use of the latter words may be said to be the typical feature of the quitclaim. It is strongly intimated by at least one court that the use of the operative words "grant, bargain, and sell" in connection with "right, title, and interest" does not change the character of the conveyance.[1]

Very frequently a conveyance is employed, in the general form of a quitclaim deed and passing under that name, but which purports to pass the land itself and not merely the right, title and interest of the grantor. Between such a conveyance and the ordinary quitclaim a distinction must be noted. The grantee under the former has been uniformly held to be a bona fide purchaser, standing, in this particular, upon an equal footing with one who claims under a deed of bargain and sale with covenants for title. The legislature of Wisconsin has provided by statute[2] that a deed of quitclaim may be in the following form: "A. B., grantor, of —— county, Wisconsin, hereby quitclaims to C. D., grantee, of —— county, Wisconsin, for the sum of —— dollars, the following tract of land in —— county (here describe the premises)." Such deed is declared to have the effect of a conveyance in fee-simple of all the right, title, interest and estate of the grantor. Under this statute it was held in *Cutler*

*This question does not embrace cases in which the quitclaim is in the chain of title, but in which the purchaser claims by warranty deed from his immediate grantor. Such a purchaser is uniformly regarded as bona fide and within the protection of the statute. Culbertson *v.* Witbeck (1892), 92 Mich. 469; Otis *v.* Kennedy (1895), 107 Mich. 312; Raymond *v.* Morrison (1882), 59 Iowa 371; Hannan *v.* Seidentopf (1901), 86 N. W. 44; Meikel *v.* Borders (1891), 129 Indiana 529; Mining Co. *v.* Mining Co. (1880), 15 Nev. 101; Finch *v.* Trent (1892), 3 Tex. Civ. App. 568; Winkler *v.* Miller, 54 Iowa, 476; U. S. *v.* Cal. & O. Land Co. (1893), 148 U. S. 31; Stanley *v.* Schwalby (1896), 62 U. S. 255.

[1] Richardson *v.* Levi (1887), 67 Texas 359.

[2] § 2208, Compilation of 1898.

v. *James*,[3] that an instrument following the prescribed form was more than a mere quitclaim, that it was a deed of bargain and sale, and that the grantee thereunder was entitled to the protection given by the statute to bona fide purchasers, as against complainant, who claimed under a prior unrecorded warranty deed. A comparison of *Cutler* v. *James* with the case of *Martin* v. *Morris*,[4] in which the quitclaim was in the ordinary form and the purchaser thereunder was held not entitled to protection, will serve to emphasize the distinction. In an Ohio case,[5] the instrument of conveyance was in this form: "I hereby bargain, sell and quitclaim to the said Russell C. Daniels, his heirs and assigns forever, the following real estate, viz.: One equal undivided eighth part of River tract No. 5." It was held that inasmuch as the deed purported to pass the corpus of the land the grantee should be regarded as a bona fide purchaser, unless it were proven that he had actual knowledge of the defect in the title.[6] The case of *Wynne* v. *Ward*,[7] decided by the Supreme Court of Texas in December, 1905, is of interest in this connection. It appears that Barrow, the owner of the land, conveyed by warranty deed, on September 13, 1886, to the appellant, who failed to have his deed recorded until 1901. On September 26, 1886, Barrow executed to appellee a conveyance stating that he did thereby "bargain, sell and convey" to appellee "all my right, title, and interest in and to" the land; "To have and to hold all and singular the *said tract of land*," etc. It will be observed that the habendum clause refers to the land rather than to the right, title and interest of the grantor, as do the premises. In an action of trespass to try title to the tract it was held that the court would look to the entire instrument, and if it appeared therefrom to be the intention of the parties to convey the land and not merely the interest of the grantor, it would not be construed as an ordinary quitclaim. The title of the appellee was upheld. Strictly speaking, such a conveyance is a deed of bargain and sale without the usual covenants expressed. Referring to it as a quitclaim without noticing the distinction is inaccurate and confusing.

This brings us to the consideration of the second introductory proposition, what constitutes a bona fide purchaser. Two elements are essential, (1) consideration, and (2) good faith, involving a lack of knowledge or notice, actual or constructive, of any equity, interest

[3] (1885) 64 Wis. 173.

[4] (1884) 62 Wis. 418.

[5] Morris *v.* Daniels (1880), 35 Ohio State 406.

[6] See also Wilhelm *v.* Wilken (1896), 149 N. Y. 447; Butterfield *v.* Smith (1850), 11 Ill. 485.

[7] 91 S. W. 237.

or claim in the property, held by some third party. The Supreme Court of New York has thus defined the expression: "A bona fide purchaser is one who buys property of another without notice that some third person has a right, or interest in, such property, and pays a full and fair price for the same at the time of the purchase, or before he has notice of the claim or interest of such other in the property."[8]

Does one who claims by purchase under a quitclaim come within this definition? The answer to this question depends upon whether or not the mere fact of offer and acceptance of such form of conveyance is in itself sufficient to charge the vendee with notice that there is some outstanding equity or interest in the property, which constitutes a cloud upon the grantor's title. In many of the cases ordinarily cited as upholding the negative of the question there were circumstances either indicating that the purchaser had actual knowledge of a prior claim, or tending to show that he had knowledge of facts sufficient to have put him upon inquiry, and neglected to investigate the title before purchasing. Under such circumstances the grantee would not be a bona fide purchaser, even though he claimed title through a warranty deed with full covenants. The element of good faith is lacking. In such cases the form of the deed should be regarded as immaterial. Any attempted distinction is uncalled for.

Again, the instrument of conveyance may itself contain expressions indicating that there are outstanding equities against the title of the grantor, as, for example, a deed which expressly excepts "such part of the land as I may have previously conveyed";[9] or which is restricted to the grantor's "remaining interest."[10] In such cases the vendee is charged with notice by the terms of the instrument under which he claims that his grantor may have executed a previous conveyance affecting the land. In these instances the form of the deed should not be regarded as material; were the deed one of bargain and sale the grantee could not invoke the protection of the statute accorded a bona fide purchaser, as against the vendee under the prior conveyance.[11]

The quitclaim deed is in common use in this country as a substantial mode of conveyance, and is recognized as such by statute in a majority of the states. The Michigan statute[12] is as follows: "A deed of quitclaim and release, of the form in common use, shall be

[8] Spicer *v.* Waters (1873), 65 Barb. 227.
[9] Virginia & Tennessee Coal Co. *v.* Fields (1896), 94 Va. 102.
[10] Eaton *v.* Trowbridge (1878), 38 Mich. 454.
[11] Mason *v.* Black (1887), 87 Mo. 329.
[12] § 8957, Compiled Laws of 1897.

sufficient to pass all the estate which the grantor could lawfully convey by a deed of bargain and sale." By these statutes it would seem that the legislative intent was to place the quitclaim upon an equal footing, at least as far as efficiency as a method of conveyance is concerned, with a warranty deed. The only distinction is that in the latter the grantor gives the covenants of title, while in the former he does not. But the covenant, strictly speaking, is no part of the conveyance; it is, rather, the assumption of a contract obligation which may be enforced if the title to the property prove defective. As incidental to the distinction noted it follows that an after acquired title will inure to the benefit of a grantee under a warranty deed by virtue of the covenants.[13]

But the reason is not apparent why the mere difference in form should be regarded as affecting the bona fides of the conveyance, actual good faith and consideration being present. Undoubtedly the analogy frequently drawn between the old English deed by way of release, and the quitclaim as used in modern conveyancing in the United States, is responsible for a part, at least, of the prejudice that has existed against the latter.[14] Some courts seem to find it impossible to overlook the limitations placed upon the release, and regard them as still inherent in the quitclaim, notwithstanding that, due to legislation in the different states, and to changes introduced by conveyancers and by the courts themselves, the analogy has become more fanciful than real.

The cases involving the question arise almost invariably under the registry acts of the different states. Very frequently the point in issue is as to the title of a grantee under a quitclaim duly recorded as against a prior grantee under a warranty deed not recorded at all, or recorded subsequently to a quitclaim. While not worded precisely alike, the registration laws of the different states have the same, or very similar, import. The provision of the Michigan statute,[15] which is fairly representative, is as follows: "Every conveyance of real estate within this state, hereafter made, which shall not be recorded as provided in this chapter, shall be void as against any subsequent purchaser in good faith and for a valuable consideration of the same real estate, or any portion thereof, whose conveyance shall be first duly recorded."

[13] To the general rule that this result does not follow in the case of a quit claim an exception is presented by the case of Bradley Estate Co. *v.* Bradley et al. (Minn., 1906), 106 N. W. 110, which holds that under the Minnesota statute there is no difference in this particular between a warranty deed, a deed of bargain and sale, and a quit claim, and that a subsequently acquired title will inure to the grantee under any of the three, by way of estoppel.

[14] Schott *v.* Dash (1896), 49 Neb. 187.

[15] § 8988, Compiled Laws of 1897.

The Supreme Court of Michigan, as will be noticed later, is among those that hold that a purchaser by quitclaim is not entitled to be protected as a bona fide purchaser, under this statute; in other words, the form of the conveyance is held to negative the presumption that the element of good faith was present. But other courts, under statutory provisions very similar, have decided that such a grantee is a bona fide purchaser and consequently is within the protection of the statute.[16]

Leading textwriters, and especially those who discuss the question at some length, adopt this view as the better holding, both upon principle and upon authority.[17]

It may safely be said that the majority of the more recent cases support this holding. This is true, in particular, of those in which the point was necessarily in issue, and in which, for that reason, the question was discussed with a view to the principles involved. Many of the recent cases overrule prior decisions by the same court, or disapprove and decline to follow previous dicta announcing the contrary doctrine. In the case of *Brown* v. *Griffith,*[18] the Supreme Court of Nebraska took occasion to say that a purchaser by quitclaim must ascertain all prior equities at his peril, that he could not be regarded as a bona fide purchaser. Four years later the same court, in the case of *Schott* v. *Dash,*[19] which was an action to quiet title, refused to follow this dictum and decided expressly that a grantee under a quitclaim may be a bona fide purchaser. Speaking through JUDGE IRVINE the court acknowledges the conflict of opinion, discusses the leading cases on both sides of the question, and after giving due consideration to the reasons usually advanced by authorities holding a contrary view, and dismissing them as unsound, lays down the propositions that "there is no distinction as to the form of the conveyance; that, in this country and in modern times, a deed of quitclaim is not merely a release, but operates to pass the grantor's title, even to one who could not at common law accept a release; that the recording acts draw no distinction; that, under them, the ques-

[16] Schott *v.* Dash (1896), 49 Neb. 187; Chapman *v.* Sims (1876), 53 Miss. 154; Strong *v.* Lynn (1888), 38 Minn. 315; Dow *v.* Whitney (1888), 147 Mass. 1; Stark *v.* Boynton (1897), 167 Mass. 443; Ellison *v.* Torpin (1898), 44 W. Va. 414; Fleetwood *v.* Brown (1886), 109 Ind. 567; Smith *v.* McClain (1896), 146 Ind. 77; Reed *v.* McConnell (1842), 4 Scam. (Ill.) 117; Brown *v.* Coal Co. (1880), 97 Ill. 214; Bradbury *v.* Davis (1880), 5 Col. 265; Bagley *v.* Fletcher (1884), 44 Ark. 153; Babcock *v.* Wells (1903), 25 R. I. 23; Frey *v.* Clifford (1872), 44 Cal. 335; Graff *v.* Middleton (1872), 43 Cal. 341; McDonald *v.* Belding (1892), 145 U. S. 492; Moelle *v.* Sherwood, (1893), 148 U. S. 21; Boynton *v.* Haggart (1903), 120 Fed. Rep. 819.

[17] Rawle: Covenants for Title, p. 35; Jones: Conveyancing, Vol II, § 1394; Washburn: Real Property, § 2213.

[18] (1892) 35 Nebr. 361.

[19] (1896) 49 Neb. 187.

tion is not under what form of conveyance one claims, but whether one is a bona fide purchaser; and that, therefore, the holder of a quitclaim deed is entitled to the same protection as one under a deed of bargain and sale, or containing covenants of warranty." The title of the defendant, derived under a quitclaim, was upheld.

The case of *Smith* v. *McClain*[20] was decided under and with express reference to the recording law of Indiana enacted in 1895. The plaintiff claimed title to the property in dispute as an heir. Defendant held as grantee under a quitclaim. It was contended in behalf of the plaintiff that defendant, because of the form of the conveyance to him, was not entitled to the protection afforded a bona fide purchaser. The court, in deciding against this contention, said: "While there is some conflict in the authorities upon this question, we think the correct doctrine under the recording acts is, that one may become a bona fide purchaser under a quitclaim deed, the same as under any other form of conveyance."

The Illinois decisions, among others, were cited in the opinion rendered in *Smith* v. *McClain,* and approved. The courts of the latter state have been committed to the affirmative of the proposition since the case of *Reed* v. *McConnell.*[21] This was an action of ejectment brought by the grantee under a quitclaim which was recorded prior to the warranty deed previously given to defendant. It was found that the plaintiff had knowledge of facts which should have put him on inquiry. But the court in rendering its opinion with special reference to the recording act of 1833, enunciated the general rule in language since followed and approved by the courts of Illinois: "A deed of release and quitclaim is as effectual for the purpose of transferring title to land as a deed of bargain and sale; and the prior recording of such deed will give it a preference over one previously executed, but which was subsequently recorded. In this respect there is no distinction between different forms of conveyance." This case is of interest because it has been cited as a precedent by nearly all the courts holding the affirmative of the question, and because of its comparatively early date, it being decided three years prior to the case of *Oliver* v. *Piatt,*[22] which is almost universally cited as sustaining the contrary view, and which will be considered more particularly hereafter.

From the case of *Oliver* v. *Piatt,* and the later cases, *May* v. *Le-Claire*[23] and *Dickerson* v. *Colgrove,*[24] it was supposed that the

[20](1896) 146 Ind. 77.
[21](1842) 4 Scammon 117.
[22](1845) 44 U. S. 333.
[23](1870) 11 Wall. 217.
[24](1879) 100 U. S. 579.

Supreme Court of the United States had committed itself to the proposition that a grantee under a quitclaim is not a bona fide purchaser. But these cases, in so far as they establish this doctrine, have been overruled by the later cases of *McDonald* v. *Belding*[25] and *Moelle* v. *Sherwood*.[26] The latter case, which was an action to quiet title, arose in Nebraska. The opinion of the court, which was given by MR. JUSTICE FIELD, is clear, concise and unequivocal. It is probably the best statement of the reasons why the vendee of property under a quitclaim should be regarded as a bona fide purchaser, that has as yet been made. For this reason, and because of the respect to which the learning and ability of its author are justly entitled, the opinion will be quoted at some length.

"The doctrine expressed in many cases that the grantee in a quitclaim deed cannot be treated as a bona fide purchaser does not seem to rest upon any sound principle. It is asserted upon the assumption that the form of the instrument, that the grantor merely releases to the grantee his claim, whatever it may be, without any warranty of its value, or only passes whatever interest he may have at the time, indicates that there may be other and outstanding claims or interests which may possibly affect the title of the property, and, therefore, it is said that the grantee, in accepting a conveyance of that kind, cannot be a bona fide purchaser and entitled to protection as such; and that he is in fact thus notified by his grantor that there may be some defect in his title and he must take it at his risk. This assumption we do not think justified by the language of such deeds or the general opinion of conveyancers. * * * In many parts of the country a quitclaim or a simple conveyance of the grantor's interest is the common form in which the transfer of real estate is made. A deed of that form is, in such cases, as effectual to divest and transfer a complete title as any other form of conveyance. There is in this country no difference in their efficiency and operative force between conveyances in the form of release and quitclaim and those in the form of grant, bargain and sale. * * * If in either case the grantee takes the deed with notice of an outstanding conveyance of the premises from the grantor, or of the execution by him of an obligation to make such conveyance of the premises, or to create a lien thereon, he takes the property subject to the operation of such outstanding conveyance or obligation, and cannot claim protection against it as a bona fide purchaser. But in either case if the grantee takes the deed without notice of such outstanding conveyance or obligation respecting the property, or notice of facts

[25](1892) 145 U. S. 492.
[26](1893) 148 U. S. 21.

which, if followed up, would lead to a knowledge of such outstanding conveyance or equity, he is entitled to protection as a bona fide purchaser. * * * Covenants of warranty do not constitute any operative part of the instrument in transferring title. That passes independently of them. They are separate contracts intended only as guaranties against future contingencies. The character of bona fide purchaser must depend upon attending circumstances or proof as to the transaction, and does not arise, as often, though, we think, inadvertently, said, either from the form of the conveyance or the presence or the absence of any accompanying warranty."

By the decision in *Moelle* v. *Sherwood* any doubt as to the attitude of the Supreme Court has been removed; and the frequency with which the opinion of MR. JUSTICE FIELD has been cited and approved in later cases suggests the extent to which it has influenced the courts of the different states. It has done much to break down the spirit of antagonism that has existed against the quitclaim deed. Being decided by the highest court in the country, upon principle rather than upon authority, and with express and unequivocal disaffirmance of the contrary view laid down in previous opinions, this decision cannot be dismissed upon argument, by any conscientious court, without careful consideration. As a precedent the case has great weight in establishing that the grantee under a quitclaim is entitled to be regarded as a bona fide purchaser.

Modifications of the Affirmative Rule:

Having discussed what is believed to be the better doctrine in regard to this question, together with the reasons and authorities upon which it is based, certain modifications of, or variations from, this doctrine, now present themselves for consideration. The courts of a few states, while holding that a grantee under a quitclaim may be a bona fide purchaser, yet hesitate to declare that such grantee stands upon an equal footing with one who claims title under a warranty deed with full covenants of title. The fact of accepting a quitclaim is regarded as a "significant circumstance" in determining the question of good faith; but if it be affirmatively shown that the grantee purchased without knowledge of prior equities, or of facts sufficient to cause inquiry and paid value for the property, he is protected as a bona fide purchaser. This view makes the actual good faith of the parties the controlling element, allowing the presumption of mala fides arising from the form of the conveyance to be rebutted by proof of the contrary fact. It will be noticed that this apparent variation from the doctrine contended for, as laid down in *Moelle* v. *Sherwood,* is not in the rule of law itself, but rather

in the rules of evidence governing its application. The Supreme Court of Kansas adopted this view in the leading case of *Merrill* v. *Hutchinson*:[27] "The form of the deed alone did not conclude Hutchinson nor prevent him from becoming a purchaser in good faith; it simply operated as a warning to him to put him upon his inquiry. It was his duty then to look further and ascertain why the deed was made without covenants of warranty; and he took it loaded with such outstanding equities or interests as he might have discovered by the exercise of reasonable diligence." Later Kansas cases follow *Merrill* v. *Hutchinson,* and courts in a few other states that formerly held the presumption of mala fides to be conclusive indicate a tendency in the same direction.[28]

A distinction is sometimes made between equities to which the registry laws apply and equities to which they do not, it being held that the grantee by quitclaim may be a bona fide purchaser as to the former but not as to the latter. Thus a purchaser by quitclaim duly recorded has a better title than one who claims under a warranty deed previously given, but not recorded. This theory is apparently based upon the idea that failure to record the previous warranty deed amounts to negligence which concludes the grantee thereunder. Clearly as against the grantor, or any other person standing in no better position than does the grantor, the title of such grantee is good though his deed is not recorded. The reason for the distinction does not seem to be well founded, and the holdings under it are unsatisfactory in that they make the effect of the quitclaim depend, not upon the intention and good faith of the parties to it, but rather upon the omission of a third person. However, it seems to be the settled law in Missouri,[29] and is approved elsewhere.[30]

It will be observed that while the grantee under a quitclaim is not placed upon an equal footing with a grantee under a warranty deed with full covenants, by the Kansas and Missouri decisions, yet it is expressly conceded that he may be a bona fide purchaser. To this extent they support the doctrine contended for, and it is not improbable, judging from the examples furnished by other courts, and also by earlier holdings in Kansas and Missouri, that the courts of these states are in a transition stage, and that eventually they will come to disregard the prejudice against the quitclaim, and will recognize that the form of the conveyance is not material.

---

[27] (1890) 45 Kan. 296.

[28] Smith *v.* Rudd (1892), 48 Kan. 296; Ferguson *v.* Tarbox (1896), 3 Kan. App. 656; Miller *v.* Fraley (1861), 23 Ark. 735; Hill *v.* Grant (1898), 44 S. W. (Texas) 1016.

[29] Fox *v. Hall* (1881), 74 Mo. 315; Campbell *v.* LaClede Gas Light Co. (1884), 84 Mo. 352.

[30] Cook *v.* Dinsmore (1891), 5 Ohio Cir. Ct. Rep. 385.

The Negative View of the Question.

While it is believed that the case of *Moelle* v. *Sherwood* and other decisions cited in connection therewith lay down the better doctrine both on principle and on authority, it must be conceded that the contrary view has a very respectable following, and that it is not unsupported by reason. Undoubtedly there is some basis for the prejudice that has existed against the quitclaim deed. It is the form of conveyance commonly employed when the title of the grantor is open to question or is subject to equities. Under it the grantor assumes no personal liability as would be the case if the usual covenants of title were given. Being used so frequently in speculative enterprises and under circumstances in which the actual bona fides is very doubtful, it is perhaps not strange that some courts have come to regard the mere fact of giving and accepting a quitclaim as a "suspicious circumstance" indicating a lack of good faith. Many of the cases most frequently cited as sustaining this view arose upon facts which strongly indicated actual mala fides. Probably the decisions in these cases would have been the same had the conveyance in question been a warranty deed. In other cases the facts developed, while not conclusive of bad faith, were yet sufficient to give rise to a well-founded suspicion of it; and the courts in their desire to do justice and prevent unfair dealing, and finding nothing else of a tangible nature upon which to decide, have seized upon the form of the conveyance, laying down the doctrine that it alone was sufficient to prevent the vendee from being accorded the rights of a bona fide purchaser. Obviously it is impossible to say in many cases the exact extent to which the form of the conveyance influenced the court. Other cases have been decided solely with reference to precedent. In many of these decisions the language used was uncalled for and consequently must be classed as mere dictum, but, coming from the sources that it does, it is dictum, that courts decline to dismiss without consideration.[31]

Many of the cases holding this view refer expressly to the case of

[31] May *v.* Le Claire (1870), 11 Wall. 217; Dickerson *v.* Colgrove (1879), 100 U. S. 578; U. S. *v.* Sliney (1884), 21 Fed. Rep. 894; Derrick *v.* Brown (1880), 66 Ala. 162; Wood et al. *v.* Holly Mfg. Co. (1893), 100 Ala. 326; Fries *v.* Griffin (1895), 35 Fla. 212; Steele *v.* Bank (1890), 79 Iowa 339; Wickham *v.* Henthorn (1894), 91 Iowa 242; Young *v.* Chanquist (1901), 86 N. W. 205; Johnson *v.* Williams (1887), 37 Kan. 179; Peters *v.* Cartier (1890), 80 Mich. 124; Messenger *v.* Peters (1901), 129 Mich. 93; Beakley *v.* Roberts (1899), 120 Mich. 209; Reed *v.* Knight (1895), 87 Maine 181; Marshall *v.* Roberts (1872), 18 Minn. 405; Am. Mortgage Co. *v.* Hutchinson (1890), 19 Ore. 334; Huff *v.* Crawford (1896), 89 Texas 214; Culmell *v.* Borroum (1896), 13 Tex. Civ. App. 458; Martin *v.* Morris (1885), 62 Wis. 418; Fowler *v.* Will (S. Dakota, 1905), 102 N. W. 598; Leland *v.* Isenbeck (1873), 1 Idaho 469; Hows *v.* Butterfield (1899), 92 S. W. 1114 (Tenn.).

Oliver v. *Piatt*.[32] The object of the bill in this case was to follow certain property (which the court held to be trust property), into the hands of a grantee under a quitclaim deed. It was found that the vendee had actual knowledge of the facts, having been associated with the vendor in dealings concerning this same property. As to the effect of the quitclaim, MR. JUSTICE STORY, who gave the opinion of the court, went no farther than to say that the fact that an agreement to which the grantee was a party contained a stipulation that only a quitclaim should be given for any of the land, was a "suspicious circumstance." Just what the court meant to imply by this phrase is not clear; but the inference seems to be scarcely warranted that it was intended to lay down the doctrine that a grantee under a quitclaim might not be a bona fide purchaser. In this connection it is interesting to note that MR. JUSTICE STORY, in rendering an opinion in the case of *Flagg* v. *Mann*,[33] expressly held that a grantee by quitclaim was a bona fide purchaser. It seems evident that the language used in *Oliver* v. *Piatt* has been given a meaning which was not intended by its author. The dicta in *May* v. *LeClaire* and *Dickerson* v. *Colgrove*, supra, were uttered with express reference to *Oliver* v. *Piatt*, rather than to the underlying reasons, and are therefore open to criticism. As before stated, these cases have been overruled, in so far as they are authority upon this question, by the later cases of *McDonald* v. *Belding* and *Moelle* v. *Sherwood;* and as an overruled case can have no value as a precedent save for the reasoning upon which the decision was based, it follows that the earlier holdings of the Supreme Court should have little influence upon the question at the present time.

Among the state courts adopting the view that the grantee by quitclaim is not a bona fide purchaser, none has been more consistent in its application than has the Supreme Court of Iowa. This doctrine, which has been expressly recognized in a long line of decisions, is stated clearly and emphatically in *Steele* v. *Bank*,[34] a leading case upon this side of the question. In the opinion the court lays down the propositions, that a quitclaim conveys only the interest of the grantor, whatever that may be; that it in no sense purports to convey title, not even by inference; that the deed itself is evidence of want of, or defect in, the title; that this being so, the holder cannot take without notice, and stands unprotected by the statute; and that an unrecorded bond for a deed takes precedence over a subsequent quitclaim duly recorded, although the latter was based upon

[32](1845) 44 U. S. 333.
[33](1837) 2 Sumner 487, First Circuit, Massachusetts.
[34](1890) 79 Iowa 339.

valuable consideration, and was taken without actual knowledge of a defect in the title, or notice of facts sufficient to cause inquiry. Later cases[35] decided by the Iowa court quote and approve *Steele* v *Bank,* and the rule has become so firmly established in this state by reiteration that in all probability it will not be changed unless by legislative enactment. The courts of several other states, from which one or more leading cases have been cited as sustaining the negative of the question, are equally positive in their decisions and opinions.

Undoubtedly the prejudice that has existed against this form of conveyance has had more or less influence upon the courts. Witness the opinion of the Michigan Supreme Court in the case of *Peters* v. *Cartier,*[36] in which JUSTICE GRANT took occasion to say: "Under the cloak of quitclaim deeds, schemers and speculators close their eyes to honest and reasonable inquiries and traffic in apparent imperfections in titles. The usual method of conveying a good title—one in which the grantor has confidence—is by warranty deed. The usual method of conveying a doubtful title is by quitclaim deed. The rule is wise and wholesome that those who take by quitclaim are not bona fide purchasers. * * * It is therefore immaterial whether Cartier had notice or knowledge of complainant's title."[37]

This language is quoted with approval in a recent case in South Dakota,[38] though CORSON, P. J., gives a vigorous dissenting opinion, citing *Moelle* v. *Sherwood* and *Boynton* v. *Haggart.*

It will be noticed that the words of JUSTICE GRANT carry with them the implication that a perfectly good title may be conveyed by quitclaim, or a doubtful title, by a warranty deed. It is argued that the grantor by quitclaim purports to convey only such title as he may have: but it is not to be supposed that the grantor in any form of conveyance intended to transfer something that he did not possess. It is a general principle of law that a dishonest intention will not be presumed; and the fact that a quitclaim is used frequently in transactions that are not above suspicion is not a satisfactory reason why its use should be held to impute mala fides. It cannot be denied that a warranty deed may be, and in fact often is,

[35] Wickham *v.* Henthorn (1894), 91 Iowa 242; Hannan *v.* Seidentopf (1901), 86 N. W. 44; Young *v.* Chanquist (1901), 86 N. W. 205.

[36] (1890) 80 Mich. 124.

[37] It is interesting to note in passing that the Supreme Court of Michigan has limited the authority of Peters *v.* Cartier to cases arising under the registry acts. Ripley *v.* Seligman (1891), 88 Mich. 177; and has held that a grantee by quit claim is within the protection of the "betterment laws," which, apparently, require only an honest belief of the occupant in his right or title.

[38] Fowler *v.* Will (1905), 102 N. W. 598.

used in dishonest dealings. A grantor whose liability could not be enforced, either because of lack of financial responsibility, or for any other reason, would be as willing to execute a warranty deed with full covenants as to give a quitclaim. Ought it then to be held that the grantee under the former is protected, while the grantee under the latter is not, both having acted in perfect good faith and having paid full and fair consideration?

Indeed, it may be argued with considerable plausibility that the fact that a grantee who pays full value for the land is willing to accept a quitclaim deed indicates good faith upon his part and that he has full confidence in the title of the grantor; whereas his refusal to accept anything but a warranty deed would suggest that he regarded the title as doubtful, and desired a personal covenant with it.[39] The Supreme Court of Rhode Island, while acknowledging that quitclaims are often used in speculative enterprises, holds that the true test of their effect is the fact of purchase in good faith without notice of defect in title: "The stronger inference, if notice is to depend upon that, would seem to be more favorable to the purchaser's belief of a good title in the case of a quitclaim than in the case of a warranty deed; for in the former case he is willing to take the grantor's interest as it stands, thereby implying satisfaction with it, while in the latter case the purchaser requires a warranty, implying a need of security to fall back upon, as though he had some doubt as to the sufficiency of the title."[40]

It should be noted as a significant fact bearing upon this question, that statutes have been enacted in several states changing the doctrine that the acceptance of a quitclaim gives rise to a presumption of bad faith. In 1875, the legislature of Minnesota, apparently as the result of dissatisfaction with the decision in the case of *Marshall* v. *Roberts,*[41] passed an act designed to change the rule laid down by the Supreme Court of the state; and under this statute it has been since held that a vendee by quitclaim is entitled to be protected as a bona fide purchaser.[42] Statutes intended to have a similar effect have recently been passed in other states that formerly held that the presumption of good faith was negatived by the form of the conveyance. In North Dakota it is provided that the fact that a conveyance, if duly recorded and for a valuable consideration, is in the form of a quitclaim deed, shall not be construed to impute notice to the grantee that there is a prior unrecorded conveyance,

[39] Rawle, Covenants for Title, p. 35.
[40] Babcock *v.* Wells (1903), 25 R. I. 23.
[41] (1872) 18 Minn. 405.
[42] Strong *v.* Lynn (1888), 38 Minn. 315.

nor shall it be held to affect the question of good faith,[43] and a similar provision in the statutes of Maine is to the effect that a conveyance of all the "right, title and interest" of the grantor shall be as effectual as if purporting to pass the title to the land, as against a prior unrecorded conveyance.[44]

In all probability these provisions, in part at least, were suggested by the fact that grantees, ignorant of the distinction drawn by the courts between different forms of conveyances and the consequent difference in legal effect, are often imposed upon by unscrupulous grantors.

It is believed that the enactment of these and similar statutes, together with the change in the attitude of many courts, indicates clearly that the present tendency is toward the doctrine that the grantee by quitclaim is entitled to be protected as a bona fide purchaser, and that as regards the presumption of good faith there should be no distinction based upon the form of the conveyance. This holding is certainly more in harmony with the spirit of the registration acts, as well as with the general principles of the law, than is the contrary view: and, though, as suggested previously, there is no decided preponderance of adjudicated cases upon either side, it may safely be said, giving due prominence to the more recent cases, that it is supported by the better authority.

L. W. CARR.

ANDERSON, MICHIGAN.

[43] L. 1903 Ch. 152.
[44] L. 1903 Ch. 220.